Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 09 MEDICAL CARE PROGRAMS

Chapter 26 Community Based Services for Developmentally Disabled Individuals Pursuant to a 1915(c) Waiver

Authority: Health-General Article, §§2-104(b), 15-103, and 15-105, Annotated Code of Maryland

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Alternative living unit" means a residence that:

(a) Provides residential services for individuals who, because of developmental disabilities, require specialized living arrangements;

(b) Admits not more than 3 individuals; and

(c) Provides 10 or more hours of supervision per unit per week.

(2) "Appropriate evaluation" means the assessment of an individual by qualified developmental disabilities professionals using accepted professional standards to document the presence of a:

(a) Developmental disability as defined in Health-General Article, §7-101(e), Annotated Code of Maryland; or

(b) Severe, chronic disability that qualifies the individual for support services as defined in Health-General Article, §7-403(c), Annotated Code of Maryland.

(3) "Chronic care facility" means an institution which:

(a) Falls within the jurisdiction of Health-General Article, §19-307(a)(1)(ii), Annotated Code of Maryland; and

(b) Is licensed pursuant to COMAR 10.07.01 or other applicable standards established by the state in which the service is provided.

(4) "Day habilitation services" means a program of habilitation and health-related services which is routinely provided during the day in a community setting for a minimum of 30 hours per week, not less than 5 days per week, according to an individually designed and implemented plan of services. On one of the 5 days the program may be provided for not less than 4 hours. The habilitation program may include scheduled training or skills development activities which are conducted at sites away from the day habilitation services center.

(5) "Day habilitation services center" means a facility or a site which provides day habilitation services to individuals with developmental disabilities who do not require 24-hour inpatient care, but who, due to the degree of disability, are not capable of full-time independent living.

(6) "Department" has the meaning stated in COMAR 10.09.36.

(7) "Developmental Disabilities Administration (DDA)" means that agency of the Department of Health and Mental Hygiene which, under Health-General Article, Title 7, is charged with the responsibility for providing services to persons who are developmentally or otherwise disabled.

(8) "Developmental disability" means a severe chronic disability of an individual that:

(a) Is attributable to a physical or mental impairment other than the sole diagnosis of mental illness, or to a combination of mental and physical impairments;

(b) Is manifested before the individual attains the age of 22;

(c) Is likely to continue indefinitely;

(d) Results in an inability to live independently without external support or continuing and regular assistance; and

(e) Reflects the need for a combination and sequence of special interdisciplinary or generic care, treatment, or other services that are individually planned and coordinated for the individual.

(9) "Environmental modifications" means physical adaptation to a community residence, when documented in the Individualized Service Plan as being necessary to make the residence accessible and to meet the needs of the waiver participant being served in that setting.

(10) "Group home" means a residence that:

(a) Provides residential services for individuals who, because of developmental disability, require specialized living arrangements;

(b) Admits at least 4 but not more than 8 individuals; and

(c) Provides 10 or more hours of supervision per home, per week.

(11) "Habilitation services" means a program which assists an individual to acquire and maintain those life skills that enable the individual to cope more effectively with the demands of the individual's own person and environment, and to raise the level of the individual's physical, mental, social, and vocational functioning including, but not limited to, programs of treatment with training in self-help, daily living, and survival skills.

(12) Home.

(a) "Home" means a house or apartment:

(i) Which is rented or owned by the waiver participant or the waiver participant's family or proponent;

(ii) Which may be held in trust for the waiver participant, or the waiver participant may be a roommate without appearing on a lease or title; and

(iii) Where the waiver participant lives with not more than two other unrelated waiver participants.

(b) "Home" does not mean a house or apartment that is owned or rented by a provider, although the provider may be a guarantor of rental or mortgage payments.

(13) "Home and Community Based Services Waiver for the Developmentally Disabled" means the document and any amendments to it submitted by the single State agency for Title XIX and approved by the Secretary of Health and Human Services which authorize the waiver of statutory requirements limiting coverage for home and community based services under the Medical Assistance Program's State Plan.

(14) "Individual family care home (IFC)" means a private, single family residence licensed by the Department which:

(a) Under supervision, provides a home for individuals with developmental disabilities in a family atmosphere; and

(b) Provides habilitation services for one to three individuals who are not related to the caregiver.

(15) "Individual Habilitation Plan (IHP)" means the written plan of specific action as specified in COMAR 10.22.05, which is developed and modified by an appropriately constituted interdisciplinary team.

(16) "Individualized Service Plan (ISP)" means the document serving as the basis for effective and efficient services coordination for the client, developed by an interdisciplinary team with the input and approval of the client, or the client's representative, as appropriate, focusing upon the broad service areas needed by the client, and recorded and managed by the client's service coordinator.

(17) "Intensive behavior management" means a specialized program designed to serve waiver participants who have been identified as having emotional disturbance or maladaptive behavior of sufficient severity to prevent or jeopardize community living.

(18) "Interdisciplinary team" means a group convened by the waiver participant's service coordinator, which meets to design effective, efficient individualized plans and programs, with membership comprised of, but not limited to, the waiver participant, the waiver participant's family or representative, the waiver participant's service coordinator, representatives of providers, individuals with various professional skills which are relevant to the needs of the waiver participant, and other human services staff.

(19) "Medical Assistance Program" has the meaning stated in COMAR 10.09.36.

(20) "Medical day care" means medically supervised, health-related services provided in an ambulatory setting to medically handicapped adults who, because of their degree of impairment, need health maintenance and restorative services supportive to their community living.

(21) "Medically necessary" has the meaning stated in COMAR 10.09.36.01.

(22) "Nursing facility" means a facility or a distinct part of a facility which is participating in the Medical Assistance Program as a nursing facility provider under COMAR 10.09.10 or 10.09.11.

(23) "Physician" means an individual licensed to practice medicine in the state in which services are provided.

(24) "Plan of care" means the written, individualized plan of care developed for a waiver participant in accordance with the requirements under COMAR 10.09.48, 10.22.09, or 10.22.11.

(25) "Program" has the meaning stated in COMAR 10.09.36.

(26) "Provider" means an agency which is licensed or certified to furnish covered services under these regulations through an appropriate agreement with the Department.

(27) "Provider agreement" means the contract between the Department and the provider specifying the services to be performed, methods of operation, financial and legal requirements which shall be in force before Program participation is allowed.

(28) "Qualified developmental disabilities professional (QDPP)" means an individual who:

(a) Is a registered nurse, physician, or an individual with a bachelor's degree in a relevant discipline which may include, but not be limited to:

(i) Occupational therapy,

(ii) Physical therapy,

(iii) Psychology,

(iv) Social work,

(v) Recreation,

(vi) Education; and

(b) Has a minimum of 1 year full-time or equivalent experience working directly with persons with mental retardation or other developmental disability.

(29) "Recipient" has the meaning stated in COMAR 10.09.36.

(30) "Residential habilitation services" means that training provided in a group home, alternative living unit, or individual family care home to a waiver participant which promotes skills necessary for maximum independence in daily activities of living.

(31) "Residential option services" means one or more of the services described in Regulation .08-2 of this chapter which are intended to assist eligible waiver participants, regardless of the nature and severity of their disability, to live independently and successfully in the community by assisting them to perform activities of daily living and enabling them to live in homes of their choice, receive services from providers of their choice, and take into account the use of community resources and natural supports.

(32) "Respite care" means a service for waiver participants designed to provide time-limited and temporary relief for primary informal caregivers from the ongoing responsibility of providing care for waiver participants, as well as to provide a back-up service system in the event of a crisis or emergency involving a primary informal caregiver.

(33) "Room and board" means rent or mortgage, utilities, and food.

(34) "Service coordinator" means a case management professional who is a qualified developmental disabilities professional (QDDP) selected by the client and employed by a service coordination provider under this chapter to assist the client in gaining more efficient and effective access to the service delivery system.

(35) "Services coordination" means a service that consists of the following 3 major functions that are designed to assist an individual in obtaining the needed services and programs that the individual desires in order to gain as much control over the individual's own life as possible:

(a) Planning services;

(b) Coordinating services; and

(c) Monitoring service delivery to the individual.

(36) "State residential center" means a place that:

(a) Is owned and operated by this State;

(b) Provides residential services for individuals with mental retardation and who, because of mental retardation, require specialized living arrangements; and

(c) Admits 9 or more individuals with a diagnosis of mental retardation.

(37) "Supported employment" means paid work in a variety of regular work settings in which persons without disabilities are employed, and which are especially designed for individuals with developmental disabilities facing severe impediments to employment due to the nature and complexity of their disabilities, irrespective of age or vocational potential.

(38) "Waiver participant" means a recipient who meets the eligibility requirements of these regulations.

.02 Licensing Requirements.

A. Providers of residential habilitation services shall be licensed pursuant to COMAR 10.22.03 or 10.22.14.

B. Providers of day habilitation or supported employment services shall be licensed pursuant to COMAR 10.22.12 or 10.22.13.

C. Providers of services coordination services shall be licensed by the Department pursuant to COMAR 10.22.09.

D. Providers of residential option services shall be licensed pursuant to COMAR 10.22.11.04.

E. Providers of intensive behavior management shall be:

(1) Licensed by the Department to provide services for developmentally disabled individuals; or

(2) Approved by the DDA as qualified to render services in accordance with COMAR 10.22.10.

F. Providers of any service covered under this chapter, with the exception of medical day care services, may be issued a deemed status license by the Director of DDA, in accordance with the deemed status provisions in Health-General Article, §7-903(b), Annotated Code of Maryland.

G. Providers of medical day care services shall be licensed pursuant to COMAR 10.12.04.

H. DDA shall comply with all applicable provisions of COMAR 10.21 when:

(1) Enrolling providers for services covered under this chapter;

(2) Authorizing a provider to serve greater numbers of waiver participants; or

(3) Transferring authorized positions for waiver participants from one provider to another provider.

.03 Conditions for Participation.

A. General requirements for participation in the Medical Assistance Program are that the providers:

(1) Meet all conditions for participation specified in COMAR 10.09.36, except as otherwise specified in this regulation;

(2) Meet the licensure requirements as provided in Regulation .02 of this chapter;

(3) Have a provider agreement in effect with the Developmental Disabilities Administration and the Medical Assistance Program;

(4) Verify the licenses of all service agencies with whom they contract and have a copy of the same available for inspection;

(5) Verify the licenses and credentials of all professionals whom they employ or with whom they contract and have a copy of same available for inspection;

(6) Maintain a written clinical record for each waiver participant which includes:

(a) A copy of the waiver participant's signed statement indicating the alternatives of care locations offered to him or her, and his or her choice;

(b) Date of:

(i) Discharge from a State residential center or a nursing or chronic care facility into the services covered under this chapter; or

(ii) Diversion from a State residential center or chronic care facility into the services covered under this chapter; and

(7) Have waiver participants reevaluated annually by the interdisciplinary team.

B. Services coordination providers shall submit individualized service plans to the DDA or its designee.

C. Environmental Modifications.

(1) Residential habilitation or residential option services providers shall provide environmental modifications as necessary to meet the needs of waiver participants after receiving prior authorization from DDA.

(2) Environmental modifications shall be:

(a) Provided by the residential habilitation or residential option services provider in getting a residence ready to be occupied; and

(b) Performed in accordance with applicable codes of the locality.

D. Respite Care.

(1) Residential habilitation or residential option services providers shall provide respite care as necessary to meet the needs of waiver participants.

(2) Respite care services shall be received in a:

(a) State residential center; or

(b) Community residence:

(i) Operated by a provider of residential habilitation services; and

(ii) Licensed by the State, in accordance with COMAR 10.22.03.02A(9)(b) and (c), to provide respite care.

E. Medical day care providers:

(1) Shall meet the requirements of COMAR 10.09.07; and

(2) Are exempt from meeting the requirements of Regulation .18D of this chapter.

.04 Covered Services for Services Coordination.

The Department shall reimburse for services coordination which shall include the following:

A. Convening the interdisciplinary team and conducting the team meeting for the development and revision of the ISP;

B. Assisting the waiver participant in identifying, negotiating, and obtaining needed services that are agreed upon and specified in the ISP;

C. Arranging, coordinating, and monitoring the delivery of services specified in the ISP;

D. Reassessing or arranging for the periodic reassessment of the waiver participant's needs and services;

E. Participating in the development of the waiver participant's initial IHP;

F. Participating in reviews of the waiver participant's IHP; and

G. Assisting the waiver participant in maximizing the use of the following sources of services and equipment in an effort to achieve the least costly, yet appropriate, delivery of services to the waiver participant:

(1) Services provided at no cost by governmental or charitable agencies, such as the Department of Social Services or the Department of Vocational Rehabilitation,

(2) Services covered by the Program or other third-party payors,

(3) Generic services covered by other programs,

(4) Services that can be paid for with the waiver participant's funds.

.05 Covered Services for Residential Habilitation.

A. The Department shall reimburse residential habilitation services providers for those services listed below, exclusive of room and board. These regulations do not limit payments, within the fiscal guidelines of the Department, for room, board, and normal living expenses for waiver participants.

B. Habilitation. The services shall be provided as required and recommended in the IHP. Residential habilitation services providers shall provide, as a minimum, the following:

(1) A program of habilitation which shall:

(a) Be specified in the IHP,

(b) Provide training in the development of self-help, daily living, self-advocacy, and survival skills, and

(c) Use the principles of the Developmental Model;

(2) Mobility training to maximize use of public transportation in traveling to and from work training or day programs, work sites, community services, and recreational sites;

(3) Training and assistance in developing appropriate social behaviors which are normative in the surrounding community such as conducting one's self appropriately in restaurants, on public transportation vehicles, in recreational facilities, and in stores and other public places;

(4) Training and assistance in developing patterns of living, activities, and routines which are appropriate to the waiver participant's age and the practices of the surrounding community and which are consistent with the waiver participant's interest and capabilities;

(5) Training and assistance in developing basic safety skills;

(6) Training and assistance in developing competency in housekeeping skills including, but not limited to, meal preparation, laundry, and shopping;

(7) Training and assistance in developing competency in personal care skills such as bathing, toileting, dressing, and grooming;

(8) Training and assistance in developing health care skills, including but not limited to, maintaining proper dental hygiene, carrying out the recommendations of the dentist or physician, appropriate use of medications, application of basic first aid, arranging medical and dental appointments, and summoning emergency assistance;

(9) Training and assistance to waiver participants in developing money management skills which include recognition of currency, making change, bill paying, check writing, record keeping, budgeting, and saving;

(10) Supervision of individuals as appropriate.

C. Medical. Medical services provided shall be under the direction of a physician and shall include the following:

(1) Evaluation, diagnosis, and treatment;

(2) Consultation with the waiver participant and his or her family, staff members, and personal physician, if any;

(3) Participation in the development of the initial IHP;

(4) Monitoring, reevaluation and follow-up of medical services as appropriate;

(5) Referral of waiver participants who require additional medical treatment and services which are not available at the residential services site.

D. Occupational Therapy. Occupational therapy services shall be provided that are required and recommended in the IHP and shall include:

(1) Specifications of the treatment to be rendered, the frequency and duration of that treatment, and the expected results;

(2) Evaluation and reevaluation of the waiver participant's level of functioning through the use of standardized or professionally accepted diagnostic methods;

(3) Development and delivery of appropriate treatment programs which are designed to significantly improve a waiver participant's level of functioning within a reasonable period of time;

(4) Selection and teaching of task-oriented therapeutic activities designed to restore physical functioning;

(5) Improvement of mobility skills.

E. Psychiatric. Psychiatric services shall be provided as recommended in the IHP, under the direction of a board certified psychiatrist, and shall include:

(1) Treatment and prevention of behavioral or emotional disorders which result from psychiatric or neurological conditions;

(2) Written assessment of the waiver participant's mental and emotional status;

(3) Consultation with the waiver participant's personal physician, and other individuals involved in the care of the waiver participant as appropriate;

(4) Periodic monitoring and follow-up of waiver participant's progress.

F. Psychological. Psychological services shall be provided as required and recommended in the IHP and shall include:

(1) A written evaluation that includes use of psychometric data, provided that there is a significant change in the waiver participant's level of functioning, or behavior, or both;

(2) Interviews and consultations with the waiver participant, family, and other pertinent individuals;

(3) Participation in the development of the initial IHP, monitoring, reevaluation, and follow-up of specific individual programs as appropriate;

(4) Assessment and treatment related to the emotional needs of the waiver participant;

(5) Consultation with staff;

(6) Development and implementation of behavior modification programs.

G. Physical Therapy.

(1) Physical therapy services shall be provided as required and recommended in the IHP which specify:

(a) Part or parts of the body to be treated;

(b) Type of modalities or treatments to be rendered;

(c) Expected results of physical therapy treatments;

(d) Frequency and duration of treatment.

(2) The needs assessment shall indicate services which are of a diagnostic, habilitative, therapeutic, or maintenance nature to prevent further deterioration.

(3) Services shall meet accepted standards of medical practice, with developed time frames for effective professional treatment.

H. Social. Social services shall be provided as required and recommended in the IHP and shall include:

(1) Identification of the waiver participant's social needs;

(2) Individual counseling to assist the waiver participant's adaption to the environment;

(3) Family and group counseling to assist and facilitate the waiver participant's adjustment.

I. Speech Pathology and Audiology. Speech pathology and audiology services shall be provided as required and recommended in the IHP and shall include:

(1) Maximization of communication skills;

(2) Screening, evaluation, counseling, treatment, habilitation, or rehabilitation of waiver participants with hearing, language, or speech handicaps;

(3) Coordination of interdisciplinary goals related to hearing and speech needs;

(4) Consultation with staff regarding the waiver participant's programs.

J. Nursing. Nursing services shall be provided which:

(1) Are preauthorized by DDA as being medically necessary and not otherwise covered by the Program;

(2) Are rendered under the direction of a physician;

(3) Are required and recommended in the waiver participant's ISP; and

(4) May include:

(a) Meeting with provider's staff to discuss how the medical services that are identified in the ISP will be implemented,

(b) Education, supervision, and training of waiver participants in health-related matters, and

(c) Short-term or intermittent skilled or unskilled nursing services.

.06 Covered Services for Day Habilitation.

A. Day habilitation services shall be provided that are required and recommended in the waiver participant's IHP by licensed day habilitation programs and shall include the services listed in Regulation .05 of this chapter and in §B—D of this regulation.

B. Transportation.

(1) Transportation services shall be arranged for participants by the day habilitation services center staff. The center shall maximize the use of the following types of transportation services in an effort to achieve the least costly, yet appropriate, means of transportation for its participants:

(a) Persons who live within walking distance of the day habilitation services center, and who are sufficiently mobile, shall be encouraged to walk;

(b) Transportation supplied by family, friends, neighbors, or volunteers;

(c) Free community transportation services.

(2) After every effort made by the center to procure the types of transportation mentioned above has failed, the Department shall reimburse the day habilitation services provider for the waiver participant's traveling costs, to and from the center, by car, van, or specially equipped vehicles. It shall be the responsibility of the center to:

(a) Arrange for use of public transportation, when appropriate;

(b) Arrange special low-cost contract agreements with transportation providers to meet the transportation needs of the participants;

(c) Group participants, when possible, not to exceed the seating capacity, in the same van or specially equipped vehicle, to minimize the cost of transportation.

(3) Records shall clearly indicate both a primary transportation plan and an alternate plan. The center shall keep accurate records which include the type of transportation used by each participant.

C. Nutrition.

(1) Arrangements shall be made for participants to eat well balanced, palatable, properly prepared meals of sufficient quality and quantity.

(2) Dietary counseling and education shall be available to all participants.

(3) Nutrition services do not include a full meal regimen.

D. Prevocational Services.

(1) "Prevocational services" means those plans and interventions to assist a waiver participant in acquiring and maintaining basic work and work-related skills. The services are designed to prepare the waiver participant for unpaid or paid employment, but are not job task oriented. Prevocational services have habilitative objectives rather than explicit employment objectives.

(2) Prevocational services include:

(a) Training the waiver participant to follow directions, adapt to work routines, and carry out assigned duties in an effective and efficient manner;

(b) Helping the waiver participant to acquire appropriate attitudes and work habits, including instruction in socially appropriate behaviors on and off the job site;

(c) Assisting the waiver participant to adjust to the productive and social demands of the workplace;

(d) Familiarizing the waiver participant with job production and performance requirements;

(e) Providing transportation between the waiver participant's place of residence and the workplace when other forms of transportation are unavailable or inaccessible;

(f) Providing mobility training, including the use of public transit and para-transit systems; and

(g) Instructing waiver participants in appropriate use of job-related facilities such as break areas, lunch rooms or cafeterias, and restrooms.

(3) Prevocational services are covered by the Program if:

(a) The waiver participant previously resided in a State residential center or nursing facility and has a demonstrated earning capacity of less than 50 percent of the federal minimum wage, as determined in accordance with certification standards promulgated by the U.S. Department of Labor;

(b) The services are an essential component of the waiver participant's IHP;

(c) Work productivity is a secondary or tertiary goal of these services, subordinate to the acquisition and retention of work and work-related skills;

(d) The provider's program is certified by the U.S. Department of Labor as a "work activity center", in accordance with the Fair Labor Standards Act, §14(c); and

(e) The waiver participant is engaging in compensable work as a necessary but subordinate part of the receipt of habilitation services.

.07 Covered Services for Environmental Modifications.

A. Environmental modifications shall be provided on a limited, one-time-only basis to the extent necessary to enable waiver participants with physical infirmities or disabilities to live safely in community homes as an alternative to institutionalization.

B. The environmental modifications are limited to:

(1) Installation of bathing and toilet-area grab bars in the home of a waiver participant who has physical infirmities or disabilities, when these mechanisms are not already installed;

(2) Minor remodeling of the home to make it physically accessible for a waiver participant;

(3) Construction of access ramps and railings for a waiver participant who uses a wheelchair or who has limited ambulatory ability;

(4) Installation of detectable warnings on walking surfaces;

(5) Adaptations to the electrical, telephone, and lighting systems;

(6) Life-saving equipment for waiver participants;

(7) Widening of doorways and halls for wheelchair use; and

(8) Installation of chair glides along stairways.

C. The services in this regulation are covered only if prior authorization is received from DDA, to assure that the proposed modifications are necessary to meet the waiver participant's needs and that the modifications conform with the requirements in these regulations.

.08 Covered Services for Respite Care.

A. Respite care may only be provided to waiver participants who receive residential habilitation or residential option services in their home or in an individual family care home.

B. When respite care is received in a:

(1) State residential center, it is limited to a total of 45 days within any 12-month period;

(2) Community residence, it is limited to 14 consecutive days at a time and to a total of 28 days within any 12-month period.

C. Room and board is included in the residential habilitation or residential option services provider's reimbursement for respite care.

.08-1 Covered Services for Supported Employment.

A. Supported employment services are available to waiver participants:

(1) Who previously resided in a State residential center or nursing facility;

(2) For whom competitive employment at or above the minimum wage is unlikely; and

(3) Who, because of their disability, need ongoing post-employment support to perform in a work setting.

B. Supported employment services are designed to assist a waiver participant with accessing and maintaining paid employment. The services shall be provided as required and recommended in the waiver participant's ISP, as an alternative model of day habilitation.

C. Supported employment services include:

(1) Individualized assessment and development of employment-related goals and objectives;

(2) Individualized and group counseling;

(3) Individualized job development, placement, and work adjustment services that produce an appropriate job match between the waiver participant and the waiver participant's employer;

(4) On-the-job training in work and work-related skills required to perform the job;

(5) Ongoing evaluation, supervision, and monitoring of the waiver participant's performance on the job which are required because of the waiver participant's disabilities, but which do not include supervisory activities rendered as a normal part of the business setting;

(6) Ongoing support services necessary to assure job retention;

(7) Training in related skills essential to obtaining and retaining employment, such as the effective use of community resources and break or lunch areas, and transportation and mobility training;

(8) Transportation between the waiver participant's place of residence and the workplace, when other forms of transportation are unavailable or inaccessible;

(9) Adaptive equipment necessary to obtain and retain employment; and

(10) Community integration activities.

.08-2 Covered Services for Residential Option Services.

A. Residential option services are available as an alternative to residential habilitation for those waiver participants who:

(1) Have followed DDA's application procedures according to COMAR 10.22.11;

(2) Are determined by DDA to be able to live safely in a home of the waiver participant's choosing and who are in need of at least one residential option service; and

(3) Elect, or have an authorized representative elect in the waiver participant's behalf, to receive residential option services.

B. These services shall be provided, as required and recommended in the waiver participant's ISP, as being appropriate and necessary to assist the waiver participant in living successfully in a home of the waiver participant's choosing. Residential option services include the services specified in § C--E of this regulation.

C. Personal Assistance.

(1) Services under COMAR 10.09.20 may not be reimbursed for a waiver participant receiving personal assistance under this chapter.

(2) Personal assistance services provide necessary assistance for waiver participants living in their own homes or family homes to meet their daily living needs and to ensure adequate functioning in the community. They include the following services, when they do not have a habilitative objective:

(a) Housekeeping assistance which is directly related to the waiver participant's developmental disability and which is necessary for the waiver participant's health and well-being in the home, such as:

(i) Changing bed linens,

(ii) Straightening the area used by the waiver participant,

(iii) Doing the waiver participant's personal laundry and linens, and

(iv) Maintenance of kitchen area if food preparation is necessary;

(b) Menu planning, food shopping, meal preparation, and assistance with eating;

(c) Personal hygiene and grooming, including oral and denture care, shaving, and care of skin, nails, and hair;

(d) Cleaning and maintaining adaptive devices such as wheelchairs; and

(e) Assurance of health and safety.

D. Support Services.

(1) Support services are necessary to aid the waiver participant to participate in community life as is typical in the community.

(2) Support services include the following:

(a) Guidance to optimize the waiver participant's capability of living in the community at home;

(b) Facilitating community participation by assisting with linkages to community activities, organizations, or associations;

(c) Assisting with budgeting, banking, tax preparation, and financial management;

(d) Assisting with accessing and managing government and community resources; and

(e) Assisting the waiver participant with securing and maintaining housing.

E. 24-Hour Emergency Assistance.

(1) These emergency assistance services are utilized to provide a waiver participant with access to a highly responsive form of back-up services in the event of an emergency, without dictating that the waiver participant be subject to on-site 24-hour supervision.

(2) The access to 24-hour emergency assistance shall be adapted to the skills and needs of the waiver participant and may include the use of an emergency telephone number, a pager, or other appropriate technology.

.08-3 Assistive Technology and Adaptive Equipment.

A. This technology and equipment includes the assistive technology and adaptive equipment necessary to enable a waiver participant to live in the community and to participate in community activities, when this technology and equipment is not otherwise covered by the Program.

B. The following items or services are included:

(1) Equipment needed to adapt the waiver participant's or family's vehicle;

(2) Purchase or rental of certain types of medical equipment to allow greater independence for a waiver participant;

(3) A prompted assisted living system for a waiver participant; and

(4) Assessments, specialized training, and upkeep and repair needed in conjunction with the use of these devices and equipment.

.08-4 Covered Services for Intensive Behavior Management.

Services shall be provided in accordance with COMAR 10.22.10.

.08-5 Covered Services for Medical Day Care.

A. Unit of service means a day of care in which the participant is certified present at the medical day care center for a minimum of 4 hours.

B. Medical day care services shall be provided in accordance with COMAR 10.09.07.

C. Medical day care services may be covered for not more than 5 days per week.

.09 Conditions for Reimbursement.

The Department shall reimburse for services in Regulations .04—.08-5 of this chapter when they are:

A. Provided to waiver participants;

B. With the exception of medical day care services, contained in the waiver participant's plan of care, approved initially and within 12 months after that by a:

(1) Licensed physician;

(2) Licensed physician's assistant or licensed nurse practitioner in accordance with applicable law; or

(3) Qualified developmental disabilities professional; and

C. With the exception of medical day care services, adequately described in the progress notes in the waiver participant's record, signed and dated by a qualified developmental disabilities professional.

.10 Limitations.

A. These regulations do not cover the following services:

(1) Services available to waiver participants through programs funded under the Rehabilitation Act of 1973, §110, Public Law 94-142, or Education of the Handicapped Act, §602(16) and (17);

(2) Services which are not part of a waiver participant's plan of care as established by a:

(a) Licensed physician;

(b) Licensed physician's assistant or licensed nurse practitioner in accordance with applicable law; or

(c) Qualified developmental disabilities professional;

(3) Services which are not included in Regulations .04—.08-5 of this chapter; and

(4) Medical day care services which are not provided in accordance with COMAR 10.09.07.

B. Providers are not entitled to reimbursement from the Program unless the waiver participant served by that provider is certified for medical eligibility by the Department or its designee and for financial eligibility by the Department of Human Resources or its designee.

C. Providers of services coordination services pursuant to these regulations may not be providers of any other service covered under this chapter for waiver participants.

D. If the Program denies payment or requests repayment on the basis that an otherwise covered service was not programmatically necessary, the provider may not seek payment for that service from the recipient.

E. Payment may not be made for the same date of service for respite care, personal assistance, and residential habilitation services rendered to a waiver participant.

F. Payment may not be made for the same date of service to a residential habilitation services provider, a residential option services provider, and a personal care services provider under COMAR 10.09.20 for services rendered to a waiver participant. Qualified participants shall be given the option of residential habilitation or residential option services when they are determined to need residential services and qualify for both options.

G. Payment may not be made for the same date of service for day habilitation services, supported employment services, and medical day care services under COMAR 10.09.07 rendered to a waiver participant.

H. The following services shall be reimbursed only if preauthorized by DDA, or authorized by DDA after the fact in emergency situations:

(1) Environmental modifications as covered under Regulation .07 of this chapter;

(2) Assistive technology and adaptive equipment as covered under Regulation .08-3 of this chapter; and

(3) Nursing services as covered under Regulations .05 or .06 of this chapter.

.11 Participant Eligibility.

A. Waiver participants shall meet the eligibility conditions of §B of this regulation, as well as Regulation .12 of this chapter.

B. To be eligible for services under the Home and Community Based Services Waiver for the Developmentally Disabled, a person shall:

(1) Be a recipient who, immediately before placement pursuant to these regulations, is residing in a:

(a) State residential center;

(b) Nursing facility and who is determined through the Preadmission Screening Annual Resident Review (PASARR) process to:

(i) Have a developmental disability, and

(ii) Be in need of specialized services pursuant to 42 CFR §483.136; or

(c) Chronic care or nursing facility bed at a chronic care facility; or

(d) Community setting and who is determined by DDA to be at risk of placement in a State residential center or in a chronic care or nursing facility bed at a chronic care facility, in accordance with DDA's process for eligibility determinations and for determination of service priority categories;

(2) Be given a comprehensive evaluation as defined in Health-General Article, §7-104, Annotated Code of Maryland;

(3) Have an approved plan of care;

(4) Be selected by the DDA based on professionally accepted assessment measures, as appropriate to participate in the waiver program;

(5) Choose, during an interpretive interview, between institutional or home and community based services;

(6) Be certified for an ICF-MR level of care and have need for active treatment pursuant to 42 CFR §435.1009.

.12 Medical Assistance Eligibility.

A. Definitions. In this regulation, the following terms have the meanings indicated:

(1) "Aged" means a person who is 65 years old or older.

(2) "Blind" means having a condition in which a person is certified by an ophthalmologist as having either central visual acuity of 20/200 or less in the better eye with correcting glasses, or a field defect in which the peripheral field has contracted to such an extent that the widest diameter of the visual field subtends an angular distance of not greater than 20 degrees.

(3) "Child" means an individual who is younger than 21 years old.

(4) "Community spouse" means an individual who:

(a) Lives in the community outside a medical institution;

(b) Is not determined to meet the criteria for participation in the Waiver for Individuals with Developmental Disabilities or any other waiver under §1915(c) of Title XIX of the Social Security Act; and

(c) Is married to an institutionalized spouse.

(5) "Continuous period of institutionalization" means:

(a) At least 30 consecutive days of institutional care in a nursing facility or other medical institution; or

(b) A determination that a spouse meets the criteria for participation in the Waiver for Individuals with Developmental Disabilities or any other waiver under §1915(c) of Title XIX of the Social Security Act.

(6) "Disabled" means the inability to perform any substantial gainful activity by reason of a medically determinable physical or mental impairment which is expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months.

(7) "Institutionalized spouse" means an individual who is married to a community spouse and who:

(a) Is an inpatient in a nursing facility or other medical institution with a length of stay exceeding 30 days; or

(b) Is determined to meet the criteria for participation in the Waiver for Individuals with Developmental Disabilities or any other waiver under §1915(c) of the Social Security Act.

B. Financial eligibility for waiver participants is determined according to this regulation and COMAR 10.09.24, as cited in §§C—F of this regulation.

C. Categorically Needy. An individual is eligible for waiver services as categorically needy if the individual is receiving Medical Assistance as a:

(1) Recipient of Supplemental Security Income (SSI); or

(2) Member of a low income family with children, as described in §1931 of the Social Security Act.

D. Medically Needy. An individual is eligible for waiver services as medically needy if the individual is receiving Medical Assistance as a medically needy person in accordance with COMAR 10.09.24.03D.

E. Optionally Categorically Needy.

(1) An individual is eligible for waiver services as optionally categorically needy, in accordance with 42 CFR §435.217, if the individual's countable income does not exceed 300 percent of the applicable payment rate for SSI, and the individual's countable resources do not exceed the SSI resource standard for one person.

(2) For the purpose of determining financial eligibility for the optionally categorically needy, the individual is treated as an assistance unit of one person.

(3) For the purpose of determining countable income for the optionally categorically needy, income is determined based on the income rules set forth in COMAR 10.09.24 which are applicable to a child or an aged, blind, or disabled individual who is institutionalized, with the exceptions specified at §E(9) of this regulation.

(4) For the purpose of determining countable resources for the optionally categorically needy, resources are determined based on the resource rules set forth in COMAR 10.09.24, which are applicable to a child or an aged, blind, or disabled person who is institutionalized, with the exceptions specified at §E(9) of this regulation.

(5) An individual is not eligible to receive waiver services if a disposal of assets or establishment of a trust or annuity results in a penalty under COMAR 10.09.24, until such time as the penalty period expires.

(6) The spousal impoverishment rules at COMAR 10.09.24.10-1 are applicable, with the differences specified in this regulation.

(7) Medical Assistance eligibility shall be redetermined at least every 12 months.

(8) As part of the determination and redetermination of Medical Assistance eligibility as optionally categorically needy, the Department of Human Resources shall determine whether the applicant or recipient is eligible as a

disabled person in accordance with COMAR 10.09.24.05E, unless the applicant or recipient is aged, blind, or a child, or has been determined as disabled by the Social Security Administration.

(9) All provisions of COMAR 10.09.24 which are applicable to a child or an aged, blind, or disabled individual who is institutionalized are applicable to waiver applicants and participants who are considered as optionally categorically needy, with the following exceptions:

(a) COMAR 10.09.24.04J(1), (2), and (3);

(b) COMAR 10.09.24.04K;

(c) COMAR 10.09.24.06B(2)(a)(ii);

(d) COMAR 10.09.24.08G(1);

(e) COMAR 10.09.24.08H;

(f) COMAR 10.09.24.09;

(g) COMAR 10.09.24.10;

(h) COMAR 10.09.24.10-1; and

(i) COMAR 10.09.24.15A-2(2).

(10) Home Exclusion. The home, as defined in COMAR 10.09.24.08B, is not considered a countable resource under §E of this regulation if it is occupied by the waiver applicant or participant, the applicant's or participant's spouse, or any one of the following relatives who are medically or financially dependent on the applicant or participant:

(a) Child;

(b) Parent; or

(c) Sibling.

F. Post-Eligibility Determination of Available Income for Optionally Categorically Needy.

(1) The countable monthly income considered for the post-eligibility determination is calculated in accordance with rules at §E of this regulation and at COMAR 10.09.24 for institutionalized aged, blind, or disabled individuals, except that the income disregards specified at COMAR 10.09.24.07L are not applied.

(2) For individuals eligible under §E of this regulation who reside in a residential habitation facility, the Department shall reduce its monthly payment for residential habilitation services by the amount remaining after deducting from the individual's countable monthly income the following amounts in the following order:

(a) A personal needs allowance of $170 and the residential habilitation provider's monthly charge of at most $375 to the participant for room and board, as of the effective date of this amendment, either or both of which may be adjusted based on a schedule issued by the Department;

(b) A spousal maintenance allowance in accordance with COMAR 10.09.24.10D(2)(b); and

(c) Incurred medical expenses as specified at COMAR 10.09.24.10D(2)(d) and (e).

(3) The Department shall determine the amount of available income to be paid by a participant towards the cost of care in a residential habilitation facility, based on the countable income remaining after deducting the amounts specified at §F(2) of this regulation.

(4) The residential habilitation provider shall collect the participant's available income, in an amount which may not exceed the cost of residential habilitation services as determined by the Department for the participant.

(5) The sum of the participant's cost of care contribution and the Department's payment may not exceed the total cost of residential rehabilitation services as determined by the Department for the participant.

.13 Payment Procedures.

A. Request for Payment.

(1) All requests for payment of services rendered shall be submitted according to procedures established by the Department. Payment requests which are not properly prepared or submitted may not be processed, but shall be returned unpaid to the provider.

(2) Requests for payment shall be submitted as set forth in COMAR 10.09.36.04A.

(3) Requests for payment shall include all units of service rendered to a waiver participant during the billing period.

B. Billing Time Limitations. Billing time limitations for claims submitted pursuant to this chapter are set forth in COMAR 10.09.36.

C. Payments.

(1) Payments shall be made only to a qualified provider. Payment may not be made to a waiver participant, to individual professionals, or to other Program providers in connection with the provision of services specified in Regulations .04—.08-5 of this chapter.

(2) Payments to service coordination providers shall be made according to a monthly waiver participant fee negotiated with the DDA.

(3) Payments to residential habilitation service providers or to day habilitation service providers during their first year of operation, to most intensive behavior management providers, to some residential option providers, and to most supported employment providers which are licensed under COMAR 10.22.13 shall be made on a cost-related basis. This includes the following:

(a) The Department shall pay these providers an interim payment based on allowable costs included in the human services agreement between DDA and the provider. The final cost settlement shall be actual allowable cost as determined by the Department through the audit and post-audit settlement process specified in COMAR 10.04.03 and 10.04.04. Tentative cost settlements may be made using unaudited annual reports submitted by providers to the Department.

(b) Allowable costs are those costs incurred in the delivery of the covered services delineated in this chapter.

(c) Return on equity is not an allowable cost.

(d) A provider fee as specified in COMAR 10.09.41 is an allowable cost.

(e) Room and board is an allowable cost only for respite care provided under Regulation .08 of this chapter.

(f) Payments to these providers shall be on a quarterly basis. Providers shall submit quarterly reports of expenditures and requests for payment in the prescribed form to the Division of Program Cost and Analysis of the Department of Health and Mental Hygiene. Providers shall receive funds in advance of expenditures anticipated in the ensuing quarter of the fiscal year.

(4) Payments to most residential habilitation and day habilitation service providers, some intensive behavior management providers, and some supported employment and residential option providers shall be made according to the prospective payment system specified in COMAR 10.22.17.

(5) Payments to medical day care service providers shall be in accordance with COMAR 10.09.07 and the waiver participant's approved plan of care.

(6) Notwithstanding any other provision of these regulations, payment may not be made under these regulations for respite care or environmental modifications, as defined in Regulation .01B of this chapter, until the §1915(c) waiver amendment authorizing coverage of these services has been approved by the Health Care Financing Administration (HCFA). Once HCFA has approved the waiver amendment, payments may be made for respite care and environmental modifications retroactive to the effective date of the waiver amendment, but not earlier than April 1, 1991.

(7) Notwithstanding any other provision of these regulations, payment may not be made under these regulations for residential option or intensive behavior management services, as defined in Regulation .01B of this chapter, or for services delivered to an individual being discharged or diverted from a chronic care facility, until the waiver amendment under the Social Security Act, Title XIX, §1915(c), authorizing coverage of these services has been approved by the Health Care Financing Administration (HCFA). Once HCFA has approved the waiver amendment, payments may be made retroactive to the effective date of the waiver amendment.

D. Cost Reporting.

(1) The provider shall maintain adequate financial records and statistical data according to generally accepted accounting principles and procedures. This system of accounts shall provide at a minimum:

(a) Maintenance of a chronological cash receipts and disbursements journal in sufficient detail to show the exact nature of the receipts and disbursements.

(b) Proper reference to supporting invoices, voucher, or other form of original evidence.

(c) Maintenance of an appropriate time reporting system for all personnel and proper payroll authorizations and vouchers.

(d) Provision for payment by check. When financial transactions involve numerous small expenditures an imprest petty cash fund shall be established, provided adequate supporting vouchers are maintained.

(e) Maintenance of records of all assets.

(f) Maintenance of records on a cash or accrual basis.

(g) Maintenance of records as required by the Department.

(h) Maintenance of all records concerning financial expense and income allocations shall be sufficiently documented by supporting data. Generally accepted accounting principles and the allocation principles of cost accounting theory shall be used for allocation of costs and income.

(i) Maintenance of separate records of financial expense and income allocation applicable to:

(i) Room and board;

(ii) Covered services as specified in Regulations .05—.08-4 of this chapter.

(2) The provider shall keep all records available for inspection or audit by the Department or its designee at any reasonable time during normal business hours. Records shall be maintained for 6 years after the period the cost report to which the materials apply is filed with the Department.

(3) The provider shall:

(a) Report direct and indirect costs applicable to recipient care. These reports shall clearly identify those direct and indirect costs and income applicable to:

(i) Room and board;

(ii) Covered services as specified in Regulations .05—.08-4 of this chapter.

(b) Submit to the Division of Program Cost and Analysis of the Department a year-end reconciliation report of financial data in the prescribed form within 30 days of the end of the fiscal year unless the Department grants the provider an extension.

E. Application of Recipient Income to Cost of Care.

(1) The Department of Human Resources shall determine the application of Optional Categorically Needy recipient's income toward the cost of services specified in Regulations .05 and .08 of this chapter pursuant to Regulation .12B of this chapter.

(2) The residential habilitation services provider shall collect the Optional Categorically Needy recipient's available income as certified by the Department of Human Resources.

(3) The total of an Optional Categorically Needy recipient's available income to be applied to the cost of care and the Department's payment may not exceed the total cost of services specified in Regulations .05 and .08 of this chapter for that individual.

.14 Recovery and Reimbursement.

Recovery and reimbursement are as specified in COMAR 10.09.36.

.15 Cause for Suspension or Removal and Imposition of Sanctions.

Cause for suspension or removal and imposition of sanctions is as specified in COMAR 10.09.36.

.16 Appeal Procedures.

A. Appeal procedures for providers are as specified in COMAR 10.09.36.

B. Persons filing appeals contending that they were not informed of their choice of services or that they were denied the service of their choice may file an appeal requesting a fair hearing under provisions contained in 42 CFR Part 431, Subpart E.

.17 Interpretive Regulation.

State regulations shall be interpreted as specified in COMAR 10.09.36.

Administrative History

Effective date:

Regulations .01—.11 adopted as an emergency provision effective February 13, 1984 (11:5 Md. R. 455); emergency status extended at 11:7 Md. R. 621; adopted permanently effective August 12, 1984 (11:15 Md. R. 1330)

Regulation .08A amended effective May 12, 1986 (13:9 Md. R. 1029)

Chapter revised effective February 20, 1989 (16:3 Md. R. 343)

Chapter revised as an emergency provision effective April 1, 1990 (17:8 Md. R. 969); amended permanently effective July 30, 1990 (17:14 Md. R. 1758)

Regulations .03A, .09B, .11B amended as an emergency provision effective November 19, 1990 (17:24 Md. R. 2835); emergency status extended at 18:4 Md. R. 444 (February 22, 1991); amended permanently effective February 18, 1991 (18:3 Md. R. 305)

Chapter revised as an emergency provision effective April 9, 1991 (18:9 Md. R. 1005); amended permanently effective October 6, 1991 (18:13 Md. R. 1482)

Regulations .01—.03, .05—.11, and .13 amended and .08-1—.08-4 adopted as an emergency provision effective June 8, 1992 (19:12 Md. R. 1130); emergency status extended at 19:19 Md. R. 1702; adopted permanently effective September 28, 1992 (19:19 Md. R. 1707)

Regulations .01, .04—.08-3, .09—.11, and .13 amended effective February 28, 1994 (21:4 Md. R. 277)

Regulation .01B amended effective August 27, 2007 (34:17 Md. R. 1507)

Regulation .01B amended as an emergency provision effective July 1, 2008 (35:17 Md. R. 1480); emergency status extended at 36:2 Md. R. 96; emergency status extended at 36:17 Md. R. 1310; amended permanently effective October 19, 2009 (36:21 Md. R. 1591)

Regulations .02, .06, .08-2, .09, and .13 amended as an emergency provision effective November 4, 1992 (19:24 Md. R. 2124); amended permanently effective February 15, 1993 (20:3 Md. R. 258)

Regulation .02 amended as an emergency provision effective July 1, 2008 (35:17 Md. R. 1480); emergency status extended at 36:2 Md. R. 96; emergency status extended at 36:17 Md. R. 1310; amended permanently effective October 19, 2009 (36:21 Md. R. 1591)

Regulation .03E adopted as an emergency provision effective July 1, 2008 (35:17 Md. R. 1480); emergency status extended at 36:2 Md. R. 96; emergency status extended at 36:17 Md. R. 1310; amended permanently effective October 19, 2009 (36:21 Md. R. 1591)

Regulation .05J amended effective August 27, 2007 (34:17 Md. R. 1507)

Regulation .08-5 adopted as an emergency provision effective July 1, 2008 (35:17 Md. R. 1480); emergency status extended at 36:2 Md. R. 96; emergency status extended at 36:17 Md. R. 1310; amended permanently effective October 19, 2009 (36:21 Md. R. 1591)

Regulation .09 amended as an emergency provision effective July 1, 2008 (35:17 Md. R. 1480); emergency status extended at 36:2 Md. R. 96; emergency status extended at 36:17 Md. R. 1310; amended permanently effective October 19, 2009 (36:21 Md. R. 1591)

Regulation .10A amended as an emergency provision effective July 1, 2008 (35:17 Md. R. 1480); emergency status extended at 36:2 Md. R. 96; emergency status extended at 36:17 Md. R. 1310; amended permanently effective October 19, 2009 (36:21 Md. R. 1591)

Regulation .12 repealed and new Regulation .12 adopted effective February 17, 2003 (30:3 Md. R. 179)

Regulation .13C amended as an emergency provision effective July 1, 2008 (35:17 Md. R. 1480); emergency status extended at 36:2 Md. R. 96; emergency status extended at 36:17 Md. R. 1310; amended permanently effective October 19, 2009 (36:21 Md. R. 1591)